

Attorneys for Petitioners
Eldon and Mary Ann Golightly, individually and as
Trustees of E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura Wheatley,
Seth and Beth Wheatley, and Wheatley Properties, LLC

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23868.0000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN RE:

WORM CREEK BASIN, WATER DISTRICT
13A, WATER RIGHT ADMINISTRATION
PROCEEDING

PETITION FOR WATER RIGHTS
ADMINISTRATION AND COMPLAINT FOR
REMOVAL OF WATERMASTER

I.
INTRODUCTION

Petitioners, Eldon and Mary Ann Golightly, individually and as Trustees of
E & M Trust; Grant Chadwick, Trustee of the Chadwick Trust; Bert and Laura Wheatley, Seth
and Beth Wheatley, and Wheatley Properties, LLC, by and through their counsel of record,
hereby request relief from the Director of the Idaho Department of Water Resources, as

described herein. This pleading is filed pursuant Idaho Code Sections 42-602, 42-607, 42-605(9), 42-105, IDAPA 37.01.01.104, 152, 200, 210, 230, and the Rules of Procedure of the Idaho Department of Water Resources controlling contested case proceedings.

II. PETITION FOR WATER RIGHT ADMINISTRATION

A. Worm Creek Drainage Basin Decree

Pursuant to Section 42-1407, Idaho Code, R. Keith Higginson, Director of the Idaho Department of Water Resources petitioned the Sixth Judicial District Court of the State of Idaho, in and for the County of Franklin, on August 31, 1971, for an order of authorization for the commencement of a general determination of the existing rights to use of surface and ground water of the Worm Creek Drainage.

On December 6, 1971, District Judge Francis J. Rasmussen, issued an order authorizing the Department to commence an investigation and determination of various rights to the use of water of Worm Creek and surface tributaries, such waters lying or being used within Franklin County, Idaho. The order did not authorize the adjudication of ground water sources. Subsequently, on February 20, 1973, the Court issued an order of joinder adding approximately 617 landowners and possible water users as parties to the adjudication. Approximately 170 claims of water rights were submitted to the Department in response.

On August 15, 1975, A. Kenneth Dunn distributed to the involved water users a proposed finding of water rights in the Worm Creek Adjudication. Subsequently, those proposed findings, with amendments, were adopted by the District Judge Francis J. Rasmussen on May 21, 1981, in a Final Decree. As part of said Decree certain findings of fact and conclusions of law and recommended decree of water right language were adopted by the Court. Specific

aspects of those documents are pertinent to the factual allegations and legal arguments presented in this Petition.

1. Findings Of Fact

Of relevance to this proceeding, the following portions of the findings of fact of the Worm Creek Adjudication are necessary to provide in full:

Para. 1. Worm Creek is an interstate stream that arises in and flows through Franklin County, Idaho. Approximately one-half (1/2) miles south of the Idaho border in the state of Utah, Worm Creek flows into the Cub River. The water supply of Worm Creek in its upper reaches results from water naturally arising within the drainage. In the lower reaches, the natural water supply is augmented by return flows and water from other stream systems, *i.e.*, from Mink Creek and Cub River. There are periods during each year when the amount of water flowing in Worm Creek and its tributaries, is insufficient to meet and satisfy the various demands by claimants of appropriate [*sic*] rights. These periods of scarcity normally occur during the latter part of the summer.

Para. 2. The water supply of Worm Creek Basin is augmented by importation of water from Cub River Basin and Mink Creek Basin. The imported water is comingled with the waters of Worm Creek and its tributaries, and the natural channel of Worm Creek and tributaries is used to convey the comingled waters to the intended place of use.

Para. 5. The diversion requirement for irrigation purposes is found to be 3.5 acre feet per acre per calendar year regardless of the source of supply. The irrigation season is from April 1 to November 1 of each year. Consumptive use or evapotranspiration of water from land and crops is a total of 2.1 acre feet per acre per growing season of which precipitation normally furnishes 0.4 acre feet per acre, leaving a net consumptive irrigation requirement of 1.7 acre feet per acre to be applied from some water source. The physical balance of 1.8 acre feet per acre (3.5 A.F. per acre – 1.7 A.F. per acre) reflects application losses that under present physical and economical conditions may be liberal, but are not unreasonable for the Worm Creek Basin.

Para. 10. Regulation of the diversion and use of water from Worm Creek and its tributaries requires that each user who diverts water must install and maintain a suitable headgate and measuring device

for the use of a watermaster in administering the distribution of the water.

2. Conclusions Of Law

Para. 1. This recommended Decree includes all of the existing rights to the waters of Worm Creek and its tributaries and upon its adoption supercedes all prior judgments of the Court. Any water user who heretofore diverted water from Worm Creek or its tributaries or who owns lands to which previously established rights were appurtenant and who, upon being joined in this action, failed to claim such water rights have forfeited such rights as provided in Section 42-1411, Idaho Code.

Para. 3. Natural channels may be used to convey comingled water pursuant to the provisions of Section 42-105, Idaho Code. Such use shall not reduce the quantity of water available to which other appropriators are entitled and allowance shall be made for loss by evaporation and seepage.

Para. 4. The combined amount of water diverted and/or delivered from all sources to irrigated land within the Worm Creek Drainage Basin shall not exceed 3.5 AF/A at the field headgate.

Para. 6. Water users whose rights are described in this recommended decree and those using the natural channels for conveyance purposes shall be required to install and maintain headgates and measuring devices for use by a watermaster in administering the distribution of water.

Para. 7. The irrigation season is from April 1 to November 1 of each year.

3. Recommended Decree Of Water Right

The following tabulation of recommended rights are grouped by source. For example, rights to use the waters of the main stem of Worm Creek and minor streams and springs directly tributary are in the first part of the report. Then, rights on major tributary streams (those on which a number of water rights are claimed) are listed in downstream order. Rights from miscellaneous named and unnamed sources are listed in a final tabulation. Within each list the rights are tabulated in chronological order by priority of use.

For distribution purposes, however, the rights described in this Decree shall be considered part of the same system, and shall be distributed as one (1) system when physically practical.

B. Relevant Historical Facts

Until approximately 1996, the Petitioners have experienced little interference with diversion and use of their water rights, pursuant to the Worm Creek Drainage Basin Decree.

Petitioners water rights are described as follows:

Chadwick	13-0256
	13-0258
Golightly	13-0216
	13-0217
	13-0286
	13-0287
	13-0288
Wheatley	12-0218
	13-0221
	13-0224
	13-0225

In the early history of the improvements to irrigation delivery in the Worm Creek Drainage Basin, four separate dams and reservoirs were constructed. They are the Foster, Glendale, Lamont, and Johnson Reservoirs. Because of significant seepage loss, operational waste discharge and return flow into Spring Creek, none of these reservoirs provided for overflow and regulatory discharges into the natural channels upon which they were constructed. This is particularly the case with regard to the Lamont and Johnson Reservoirs which were constructed within the Spring Creek Drainage Basin. (*See Exhibit A*). Additionally, no accurate measurement devices or control structures were constructed to properly administer the downstream flows to the natural channels (*i.e.*, Worm Creek and Spring Creek) or to properly account for spring flow contribution to reservoirs and the natural channel of Spring Creek.

In this regard, the Johnson Reservoir was constructed in a location where an existing spring tributary to Spring Creek is now inundated by the reservoir. This Spring Creek

water source has never been properly accounted for and delivered to the Petitioners with water rights on Spring Creek.

Recent actions by the canal companies and reservoir company (“Companies”)¹ which own the major storage and distribution facilities within the Worm Creek/Cub River system, have resulted in a series of major modifications to the preexisting, open earthen canals and ditches. Conversion of those facilities to pipelines and sprinklers during this period of time have substantially modified the hydrology and, consequently, the flows in Spring Creek. This has significantly diminished the historic volumes of water available for diversion by the Petitioners from Spring Creek.

Among other things, canal and ditch operational waste flows have been changed and directed through the Palmer Pipeline and into the Lewiston Cub Canal and no longer contribute to the flows of Spring Creek. These operational overflows and return flows constituted *de facto* delivery of Spring Creek flows instead of pass through discharges from the two reservoirs constructed in the Lower Spring Creek area of the Worm Creek Drainage Basin.

C. Illegal Diversions – Improper Or Non-Existent Measurement Devices

Contrary to the specific requirements of Paragraph 6 of the Conclusions of Law of the Worm Creek Drainage Basin Decree, many water users, particularly the Companies, have failed to install the headgates and measuring devices required by the Decree. Additionally, these failures violate Chapter 6 of Title 42 of the Idaho Code. Because of these violations, the Petitioners’ water rights on Spring Creek have been injured over the last several years and

¹ Upon information and belief, the relevant entities are: Preston-Whitney Irrigation Company, Preston-Whitney Reservoir Company, and Cub River Irrigation Company.

continue to be injured on an ongoing basis, due to insufficient or non-existent flows in Spring Creek at their diversions.

In support of these allegations, Petitioners rely in part upon the communications of Mr. Tim Luke, Water Distribution Section Manager of the Idaho Department of Water Resources. In correspondence to the Watermaster for Water District 13A, Mr. Troy Foster, Mr. Luke documented the improper and illegal lack of headgates and measuring devices in his correspondence of May 14, 2009 and April 29, 2010 (Exhibits B and C, hereto). More recently, Mr. Luke provided a comprehensive memorandum, dated June 25, 2010, entitled Worm Creek and Cub River Inventory (Water Right Administration Issues and Recommendations). (Exhibit D [attachments omitted]). In that Inventory, Mr. Luke identifies no less than 15 diversions from Worm Creek with either no measuring device or no lockable headgate, and numerous other narrative descriptions of inadequate or non-existent measuring devices from diversions on Spring Creek and other sources.

D. Illegal Enlargement Of Water Rights / Water Spreading

Because of the uncontrolled and unsupervised modifications of prior open ditches and canals by the Companies, illegal enlargement of water use under their water rights has occurred. Over the course of the last 30 years, the Companies have installed (1) the Palmer Pipe, (2) the Bradford Pipe, (3) the Idaho Pipe, (4) the Johnson-Lamont Pipe, (5) the Connection Pipe, and (6) the Webster Pipe. Additionally, they have modified water deliveries and distribution of water in the Fairview Lateral, the East Lateral, and the Middle Ditch. The existing configuration of these facilities is demonstrated in the maps generated in the Transfer Proceeding No. 75705. (Exhibits E through H). These diversions and conveyance systems have reconfigured water diversions and delivery systems from Worm Creek, Spring Creek, and Cub River sources to

expand the place of use of the water which is stored and distributed by these Companies. Many of these expansions and enlargements have been accomplished in violation of Idaho law. Exhibits E through H document the existence of these illegal expansion and enlargements.

E. Illegal Diversions To Storage

Because there are insufficient measuring devices and lack of proper administration of the diversions, as well as a lack of pass through discharge facilities to the natural channels, the reservoirs constructed in the Worm Creek Drainage Basin (which includes the Spring Creek Basin under the Decree) have been operated to illegally divert to storage water which should have been passed on to the Petitioners' Spring Creek water source. Because there are no proper pass through discharge facilities in any of these reservoirs, particularly the Johnson and Lamont Reservoirs, the natural flows of Spring Creek can no longer be delivered to Petitioners in Spring Creek. This circumstance is particularly severe due to the termination of any operational discharge waste from the open earthen ditches, such as the Middle Ditch. This became particularly significant upon the installation and operation of the Palmer Pipeline. Moreover, this pipeline delivers water illegally to an expanded area of use in the Cub River distribution service area.

In addition, the irrigation storage rights for the Johnson and Glendale Reservoirs allow diversions to storage until June 15 of each year². Many of Petitioners' water rights have priority dates earlier than the priority dates for the reservoir storage water rights. Consequently, because of the joint administration provision contained in the Worm Creek Decree (*see* p. 4, above), which requires common administration of the Spring Creek Drainage and the

² Petitioners are currently in the process of verifying the time period in which diversion to storage may be accomplished for the Lamont and Foster Reservoirs.

Worm Creek Drainage, no diversions to storage can properly be allowed after April 1st of each year if the Petitioners' Spring Creek water rights in priority are not being satisfied. Since the major modifications of the open canals and ditches to pressurized pipelines, no water has been made available from these reservoir sources despite the priorities of the Petitioners' water rights. Consequently, administration of the Worm Creek Drainage Basin Decree requires termination of this illegal water storage in the reservoirs while Spring Creek water right diversions in priority are not being met.

F. Illegal Diversions Exceeding Flow Rates And Annual Volumes

Because there are inadequate or non-existent measurement devices throughout the interconnected storage and delivery systems of the Companies, Petitioners believe that virtually all of the flow rate limits and annual volume limits of the Companies under their water rights are being exceeded. This is particularly true with regard to the reservoir storage rights because of the historic fill and re-fill of the reservoirs, despite the annual volume limitations on those rights. Because there has not been adequate administration of the water rights in the Worm Creek Drainage Basin by the Watermaster, and because there are inadequate or non-existent measuring devices on all of the diversion, injection points into natural channels, and re-diversion which are used by the Companies, virtually no restrictions have been placed upon the Companies' operations. Consequently, the Companies have operated the Spring Creek Drainage Basin and Worm Creek Drainage Basin as their respective private water systems. In effect, they have monopolized water distribution and thereby interfered with and injured Petitioners' abilities to exercise their water rights on Spring Creek in priority. These actions are in violation of Idaho law and the Worm Creek Decree.

G. Illegal Use Of Natural Channels

The Worm Creek Decree specifically provides for the use of natural channels for conveyance of water pursuant to water rights, referencing Idaho Code Section 42-105 (*see* p. 4, above).

The pertinent portion of Idaho Code Section 42-105 states:

(1) The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to comingle and reclaim water shall be subject at all times to the supervision and control of the Director of the Department of Water Resources and shall be subject to the regulation of the watermaster within an established water district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting.

The Companies have constructed a water diversion and conveyance system in the Worm Creek Drainage Basin which relies heavily upon this authorization under state law. Unfortunately, the Companies have never followed the letter of the law. Because there are no adequate measurement devices or control structures which properly account for “loss by evaporation or seepage” or for calculations of “the amount of water to which prior appropriators may be entitled,” the water rights of Petitioners have been and will continue to be injured because of the interference with the flows of Spring Creek by virtue of the actions of the Companies. Petitioners seek immediate relief preventing continued violation of Idaho Code Section 42-105 by the Companies.

REQUEST FOR RELIEF

The Petitioners request that the Director of the Idaho Department of Water Resources provide the following relief to address the grievances of the Petitioners as stated in this Petition for Water Rights Administration.

The Director should:

1. Conduct a contested case proceeding under Idaho Department of Water Resources Rules of Procedure;
2. Administer water rights in compliance with the Worm Creek Decree and Idaho law;
3. Order immediate termination of illegal water diversions and use;
4. Conduct continuing supervision of water rights administration in Water District 13A;
5. Retain jurisdiction of this matter for a sufficient period of time to assure compliance with the Worm Creek Decree and the laws of the state of Idaho;
6. Issue notices of violation to water right owners who divert and use water in a manner which does not follow all of the elements of the water rights;
7. Seek judicial orders in those cases where water right owners fail to comply with notices of violation issued by the Director; and
8. Provide such other relief to Petitioners as the Director deems appropriate under the circumstances of this matter after a full administrative hearing, conducted by the Director himself.

III. COMPLAINT FOR REMOVAL OF WATERMASTER

Pursuant to Idaho Code Section 42-605(9), Petitioners request that the Director of the Department of Water Resources remove the present watermaster for Water District 13A because he has failed to perform his duty to properly administer water rights within the Water District. Petitioners own water rights in the District, which have been adjudicated and decreed

by the state district court. Petitioners request that the Director conduct a hearing to determine if removal of the watermaster for Water District 13A is appropriate. Said hearing should also consider the appointment of a successor watermaster for the unexpired term.

Petitioners will present significant evidence at the hearing in this matter to establish the failure of the watermaster to perform his duties.

DATED this 6th day of July, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Eldon and Mary Ann
Golightly, individually and as Trustees of
E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura
Wheatley, Seth and Beth Wheatley, and
Wheatley Properties, LLC, Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2010, I caused a true and correct copy of the foregoing **PETITION FOR WATER RIGHTS ADMINISTRATION AND COMPLAINT FOR REMOVAL OF WATERMASTER** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

IDAHO DEPARTMENT OF WATER RESOURCES
Eastern Region Office
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

PRESTON-WHITNEY IRRIGATION COMPANY
P.O. Box 311
Preston, ID 83263

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

PRESTON-WHITNEY RESERVOIR COMPANY
1127 S 2400 E
Preston, ID 83263

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

CUB RIVER IRRIGATION COMPANY
Box 215
Lewiston, UT 84320

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Robert L. Harris
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

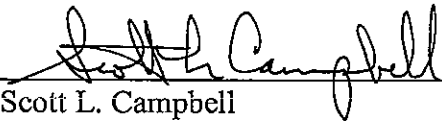
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Randall C. Budge
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201 E. Center
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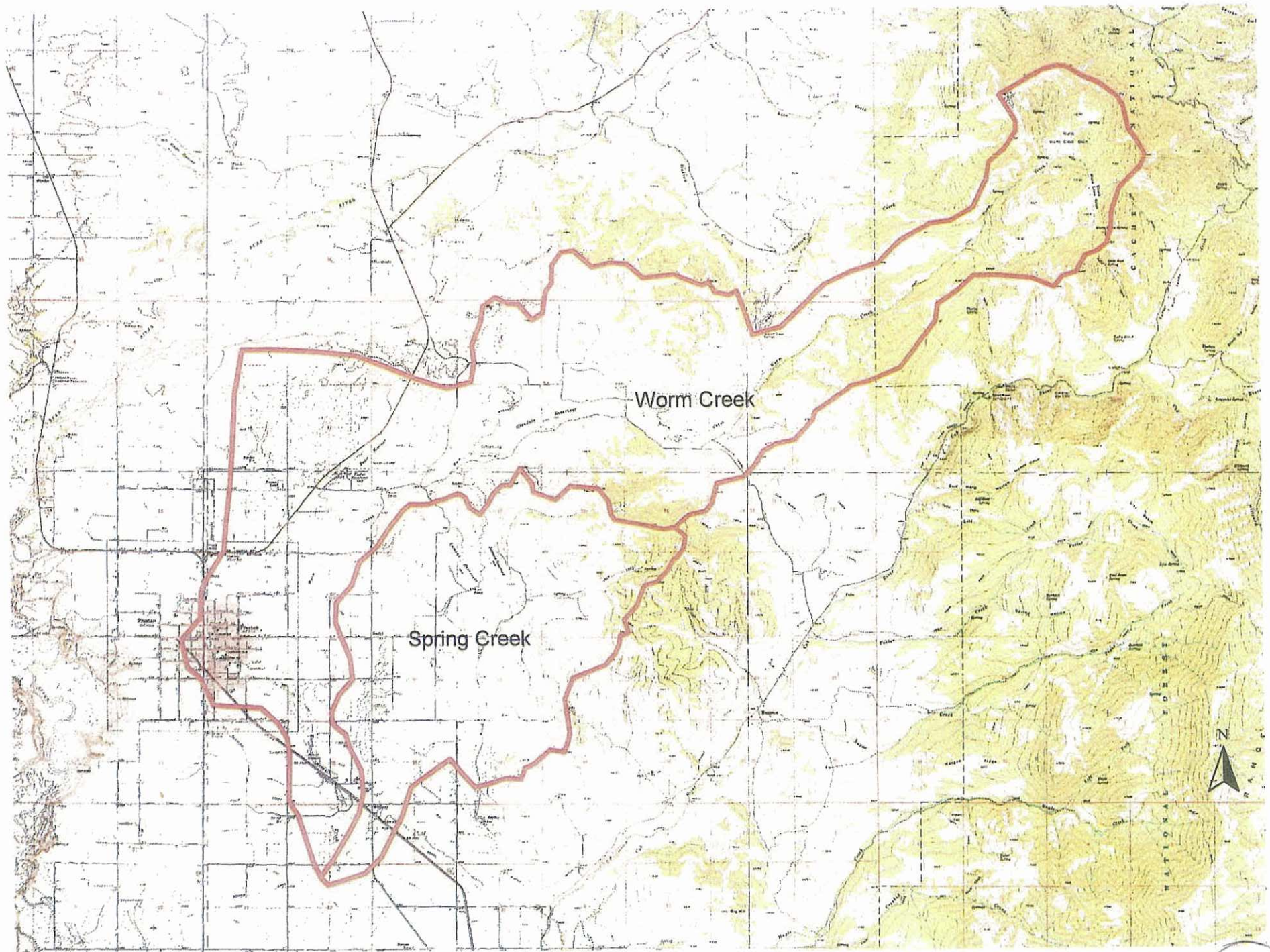
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
ATTN: Fredric W. Price
1387 S. Vinnell Way
Boise, ID 83709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Scott L. Campbell



USGS Map Downloadable on IDWR .gfile

Exhibit A

EGS



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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C.L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 14, 2009

Troy Foster
Water District 13-A Watermaster
2063 E 1600 S
Preston, ID 83263

Re: Guidance for Delivery of Water on Spring Creek, tributary to Worm Creek

Dear Troy,

On July 18, 2008, Ernie Carlsen and I visited you and toured certain areas of the Cub River water district, including Spring Creek, which is tributary to Worm Creek. During our visit, I instructed you to prohibit Preston Whitney Irrigation Company and/or Preston Whitney Reservoir Company (collectively referred to herein as Preston Whitney) from using Spring Creek to deliver any portion of their water or water rights to Preston Whitney shareholders or any other users on Spring Creek. This guidance was reiterated in a letter from the Idaho Department of Water Resources (Department) to Eldon Golightly, dated August 28, 2008. A copy of that letter was sent to you and Preston Whitney. Since sending that letter, the Department has engaged in several discussions with Preston Whitney and Gilbert Hull regarding Preston Whitney's use of Spring Creek as a conveyance channel for delivery of stored water to Mr. Hull.

On May 5, 2009, Department representatives met with Preston Whitney representatives to further discuss options for using Spring Creek as a conveyance channel for delivery of stored water. This meeting was preceded by several discussions between Mr. Hull, Ernie Carlsen and I. During the meeting with Preston Whitney on May 5th, the Department suggested that Preston Whitney consider filing a water right transfer that would add to their water rights a point of injection and point of re-diversion to and from Spring Creek. The Department also suggested that if Preston Whitney continues to deliver stored water to Spring Creek without updating their water rights to add a point of injection to and point of re-diversion from Spring Creek, then the Department would consider any water entering Spring Creek as waste or return water that is subject to appropriation in accordance with Spring Creek priority water rights. It is the Department's understanding based on our May 5th meeting that Preston Whitney will not immediately add to its' water rights a point of injection to and point of re-diversion from Spring Creek. Until or unless the Department approves a water right transfer that authorizes the use of Spring Creek as a conveyance channel for the delivery of stored water, the Department directs you as follows:


- Any or all water that enters Spring Creek as a result of Preston Whitney delivering or discharging water from its' conveyance systems to the creek channel shall be considered as operational spill, waste water or return flow water. Any such water that enters Spring Creek shall then become the natural flow of Spring Creek and subject to appropriation by the holders of water rights from Spring Creek.

Exhibit B

- The Department directs you, as watermaster of Water District 13-A, to deliver water rights on Spring Creek in accordance with the priority dates for those rights. A list of the Spring Creek water rights is attached to this letter along with computer generated summary reports for each right. Any Spring Creek rights that are senior to the right held by Mr. Hull must first be satisfied, assuming that water is available at the points of diversion for those rights and the right holders wish to have those rights delivered.
- As shown on the attached water rights list, Mr. Gilbert Hull is shown as one of three owners of right 13-311 bearing a priority date of February 2, 1893, and a diversion rate of 1.34 cfs for irrigation and stockwater purposes. The attached summary report for this right also shows that no more than 235 acre-feet per year can be diverted for irrigation purposes. This right may be delivered for the irrigation rate of diversion of 1.34 cfs on 67 acres, which equals 0.02 cfs per acre or one inch per acre. In delivering this right, you must assure that the rate of diversion does not exceed the authorized water right diversion rates. The right must be curtailed if and when the 235-acre limit is reached.
- Any water in Spring Creek that may be available for appropriation above and beyond Hull's water right shall be delivered to the next-in-time priority right holder on Spring Creek who requests or seeks delivery of water under their priority right. The Department asks that you communicate with any other users on Spring Creek regarding their interest or ability to divert any additional water that may be available in the creek.
- Mr. Hull must install a measuring device on his diversion from Spring Creek so that you can measure and control the proper delivery of water to him under his right. Separate correspondence will be sent to Mr. Hull requiring him to install a measuring device.
- The Department further directs you to curtail the diversion or use of any water from Spring Creek that is not authorized and/or described in the attached list of water rights.

If you have questions concerning this matter, please contact me or Dan Nelson, IDWR Water Distribution Section, Boise (208-287-4800).

Respectfully,



Tim Luke
Water Distribution Section Manager

Cc: Gilbert Hull
Ernie Carlsen, IDWR Eastern Region
Dan Nelson, IDWR State Office
Lyle Porter, Preston Whitney Irrigation Co.
Rob Harris, Attorney for Preston Whitney Irrigation Co.
Preston Whitney Reservoir Co.

Water Rights from Spring Creek
Sorted by Priority

5/14/2009
IDWR

Water Rt No	Basis	Source	Tributary	Priority Date	Owner(s)	Twp	Rnge	Sec	QQG	Gvt Lot	Rate (cfs)	Vol (af)	Acres	Water Use(s)
13-247	Decreed	SPRING CREEK	CUB RIVER	1878/04/01	BAKER, ILA L (Current)	15S	40E	30	NWSW	3	0.28	52	14	IRRIGATION, STOCKWATER
13-247	Decreed	SPRING CREEK	CUB RIVER	1878/04/01	BAKER, ILA L (Current)	15S	39E	25	NESE		0.28	52	14	IRRIGATION, STOCKWATER
13-60A	Decreed	SPRING CREEK	CUB RIVER	1886/05/15	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.02	9	22	IRRIGATION
13-60B	Decreed	SPRING CREEK	CUB RIVER	1886/05/15	SHARP, LYMAN J (Current)	16S	39E	1	SWSE		0.08	34	216	IRRIGATION
13-61A	Decreed	SPRING CREEK	CUB RIVER	1888/05/15	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.03	13	22	IRRIGATION
13-61B	Decreed	SPRING CREEK	CUB RIVER	1888/05/15	SHARP, LYMAN J (Current)	16S	39E	1	SWSE		0.17	73	216	IRRIGATION
					HULL, GILBERT (Current); HULL, HAROLD M (Current); HULL, ROBERT M (Current)									IRRIGATION, STOCKWATER
13-311	Decreed	SPRING CREEK	CUB RIVER	1893/02/04	HULL, ROBERT M (Current)	15S	39E	36	SENE		1.34	242.9	67	IRRIGATION, STOCKWATER
13-237	Decreed	SPRING CREEK	CUB RIVER	1900/04/01	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.15	84	22	IRRIGATION
13-62	Decreed	SPRING CREEK	CUB RIVER	1902/05/15	GOLIGHTLY, DONALD D (Current); GOLIGHTLY, NONA (Current)	16S	40E	6	NWNW	4	0.2	36	114	IRRIGATION
13-258	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	CHADWICK, MAY S (Current)	16S	40E	6	NWNW	4	0.58	102	29	IRRIGATION
13-216	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	GOLIGHTLY, DONALD D (Current); GOLIGHTLY, NONA (Current)	16S	40E	6	NWNW	4	1.8	400	114	IRRIGATION
13-144	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	MOSEY, JOSEPH L (Current)	16S	40E	6	NWNW	4	0.2	85	167	IRRIGATION
13-273	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	RALLISON, FREDRICK (Current)	16S	40E	6	NWNW	4	0.24	77	22	IRRIGATION
13-274	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	SHARP, LYMAN L (Current)	16S	39E	1	SWSE		2.85	756	216	IRRIGATION
13-274	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	SHARP, LYMAN L (Current)	16S	40E	6	NWNW	4	2.85	756	216	IRRIGATION
13-239	Decreed	SPRING CREEK	CUB RIVER	1930/04/01	BECKSTEAD, ANNE (Current); BECKSTEAD, LINDEN (Current)	15S	39E	25	SESE		0.8	140	40	IRRIGATION
13-210	Decreed	SPRING CREEK	CUB RIVER	1930/04/01	DUNKLEY, BERNELL (Current); DUNKLEY, LESLIE L (Current)	15S	39E	25	SESE		1	175	60	IRRIGATION

* Water Rights decreed from source Spring Creek in Worm Creek Decree. Note that IDWR database indicates tributary source is Cub River but USGS maps indicate that tributary source is actually Worm Creek.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

April 29, 2010

Troy Foster
Watermaster WD 13-A
2063 E 1600 S
Preston, ID 83263

Re: Use of Palmer Pipeline on Cub River Irrigation Company's Middle Ditch; Delivery of Water Rights on Spring Creek

Dear Mr. Foster,

This letter documents certain verbal and e-mail communications that I have had with you over the past three weeks concerning water distribution issues on Spring Creek and use of the Palmer Pipeline from the Cub River Irrigation Company (CRIC) and Preston-Whitney Irrigation Company (PWIC) Middle Ditches.

Until further notice is given, the Idaho Department of Water Resources (Department or IDWR) continues to direct you to work with the managers of the CRIC and PWIC to prevent the flow of water from PWIC's pipeline or conveyance system from Lamont and Johnson Reservoirs to the CRIC Palmer Pipeline. This direction is provided given the issues raised by Mr. Golightly and the Department's need to obtain further documentation from PWIC and CRIC regarding the location of lands and identification of water users who own shares in both PWIC and CRIC who have received delivery of water via the Palmer Pipeline. The Department verbally requested from PWIC's attorney documentation about the shareholders and locations of shares common to both PWIC and CRIC. This issue was also recently discussed with CRIC's attorney. IDWR has not yet received the requested information. Please note that at this time we are only asking to prevent the delivery of any PWIC water from the Lamont-Johnson conveyance system over to the Palmer Pipeline. CRIC is not prevented from using the Palmer Pipeline to deliver water from the Cub River via the Middle Ditch diversion under CRIC's Cub River water rights.

Until further notice is given, the Department also directs you to deliver PWIC's Cub River water right 13-2 to the Middle Ditch diversion from the Cub River. The Middle Ditch from the Cub River is the point of diversion for this right based on Department records. IDWR records do not document that the PWIC Fill Ditch (aka Cub River-Worm Creek Canal) is the authorized point of diversion for right 13-2. The Fill Ditch therefore should not be used for delivery of right 13-2 until PWIC's water right transfer application is approved or other approval is issued by the Department. The Palmer Pipeline and other PWIC conveyances may be used to convey any portion of PWIC's right 13-2 to PWIC shareholders who have historically relied on deliveries from the Middle Ditch diversion out of the Cub River provided IDWR can verify that the place of use for such deliveries are within PWIC's authorized service area.

Exhibit C

WD13-A Watermaster Correspondence
April 29, 2010, p. 2

Regarding PWIC's protested water right transfer, you are advised that a pre-hearing conference on this matter is scheduled between the protestants and PWIC for Monday, May 3, 2010 at the IDWR Regional Office in Idaho Falls. IDWR has invited CRIC to attend this conference in order to provide an opportunity for all the parties to discuss the water delivery issues common to the parties that have been raised before the Department. Mr. Golightly expressed interest in the Department's facilitation of such a meeting and pre-hearing conference during a visit with the Director in Boise on April 9, 2010. Your presence at the conference is not required.

The Department again directs you to administer and deliver water rights by priority on Spring Creek consistent with the Department's correspondence to you dated May 14, 2009 (copy enclosed). Mr. Gib Hull must have an installed and functional measuring device before receiving delivery of any water from Spring Creek. Failure to maintain an adequate measuring device at Mr. Hull's diversion shall result in your refusal to deliver Mr. Hull's Spring Creek water rights.

The Department wishes to arrange a visit with you over the next month to review any diversions from Spring Creek and the Kirby Pond Drainage. The purpose of the visit to Spring Creek will be to investigate creek flows and assure that any diversions from the creek are lawful and in priority.

Please contact me directly at 208-287-4959 if you have any questions regarding these matters.

Regards,



Tim Luke
Water Distribution Section

Encl: Copy of IDWR Correspondence to

Cc: Gary Spackman, IDWR Interim Director
Jeff Peppersack, IDWR Boise
James Cefalo, IDWR Eastern Region
Eldon Golightly
Rob Harris, Attorney, Preston Whitney Irrigation Co.
Randy Budge, Attorney, Cub River Irrigation Company

Memorandum

To: Water District 13-A File
From: Tim Luke
Date: June 25, 2010
Re: Worm Creek & Cub River Inventory; Water Right Administration Issues & Recommendations

This memo summarizes an inventory of diversions and water rights on Worm Creek, Cub River and Spring Creek (tributary to Worm Creek) within Water District 13-A (WD13-A). The inventory was made in response to IDWR's lack of knowledge about Worm Creek and certain ongoing concerns raised by several holders of water rights on Spring Creek. Department correspondence relative to those ongoing concerns is documented in the 2008, 2009, and 2010 WD13-A files. The WD13-A watermaster has not been involved in administration of the Worm Creek drainage since it was first added to WD13-A by an Order of the Department dated February 25, 1983. The WD13-A watermaster's jurisdiction has traditionally been limited to the main Cub River and certain tributary sources, including delivery of water to the Cub River-Worm Creek Canal (aka Preston Whitney Upper Fill Ditch). Delivery of water from Worm Creek above the Glendale Reservoir has historically been done by the Preston Whitney Irrigation Company (PWIC) since it owns or has interest in most of the water rights in that reach. The Department is not aware of any watermaster regulation or other organized delivery of water on Worm Creek or tributaries to Worm Creek below Glendale Reservoir, including Spring Creek.

Beginning in 2008, IDWR directed the WD13-A watermaster to begin regulating water rights on Spring Creek. In 2009, IDWR requested that WD13-A begin deputizing the PWIC manager or ditch rider who sets head gates and records diversions above Glendale Reservoir. A similar directive was issued to deputize ditch riders on Maple Creek, a Cub River tributary located south of Cub River near Franklin. In 2008 IDWR also issued an order requiring measuring devices for several larger diversions on Cub River. In May of 2009, IDWR also required installation of a measuring device and head gate on the Hull diversion from Spring Creek. Specific guidance was issued to the WD13-A watermaster concerning delivery of water rights on Spring Creek in 2009 and 2010. Some additional guidance was provided concerning the re-diversion of water from the Cub River Middle Ditch in 2010. Additionally, questions raised by IDWR in review of water rights in 2008 resulted in the filing of one or more water right transfers by PWIC that have subsequently been protested by several Spring Creek water rights holders (see specifically application for transfer for water right no. 13-2). In 2009, IDWR committed to conducting an inventory of water rights and diversions from Worm Creek, Cub River, Spring Creek, Maple Creek and Sugar Creek. An initial inventory was done in May, 2009 and some further visits were conducted in May, 2010. This memo summarizes the inventory of Worm Creek and Spring Creek, and includes diversions from Cub River owned or operated by PWIC and the Cub River Irrigation Company (CRIC).

Attached to the memo are inventory forms and photo graphs of diversions, measuring devices and re-diversions, and water rights lists of Worm Creek and Spring Creek.

Issues Found Pursuant to Inventory and Related Investigation

Water Right Transfer Issues

In addition to the transfer and measurement issues found over the past several years, IDWR identified several additional concerns that will likely require more water right transfers:

a) PWIC General Service Area and Water Rights Place of Use

PWIC representatives have discussed the need to potentially file a water right transfer on all of its water rights to correctly update its service area and irrigated places of use. This need was discussed at the May 3, 2010 pre-hearing conference for the protest of PWIC's transfer application of water right 13-2. IDWR concurs with this suggestion and finds it consistent with prior correspondence issued by IDWR to PWIC over the past two years. IDWR recognizes that the Cub River decree that includes PWIC's Cub River water rights lacks any place of use descriptions. The lack of place of use descriptions for the Cub River rights handicaps both IDWR and WD13-A in the administration of those water rights. PWIC should file transfers on its Cub River and Worm Creek rights (and other water source rights) as soon as possible so that the rights can be clarified and more easily administered by WD 13-A.

Lacking any other information about the place of use for PWIC's Cub River rights, it is clear that PWIC's total irrigated area as described by the Worm Creek decree is limited to a total of 10,449 acres. It is not clear to IDWR if or how any of the Cub River rights might create a larger irrigated service area. IDWR notes however that Idaho Code Section 42-222 provides for the transfer of stored water for irrigation purposes over a larger service area as long as other rights are not injured. The code states in pertinent part:

The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby.

IDWR also notes that there is some place of use overlap among the several different canal companies in the area including PWIC, CRIC, Preston Whitney Reservoir Company and the Preston Riverdal and Mink Creek Company. IDWR should not immediately seek to regulate PWIC's total irrigated area to the 10,449 acres described in the Worm Creek decree until all of PWIC's rights are further clarified by the completion of the water right transfer process. IDWR should notify PWIC to file transfers as soon as possible.

b) PWIC right no. 13-271

This right is from Worm Creek and is PWIC's earliest priority right (5/7/1880) from either Worm Creek or Cub River. The point of diversion (POD) for this right is located immediately below the Glendale Reservoir and appears to be for the Eastside Ditch which is no longer used. As per PWIC President Lyle Porter, the Eastside Ditch was the original POD for PWIC before Glendale Reservoir was built. The ditch served lands below Lamont Reservoir and from the Fairview Lateral. The lands are now served by the Eastside Gravity Lateral Association which re-diverts water from the Lamont-Johnson Ditch above the Lamont Reservoir to a gravity pipeline. The Fairview Lateral is served by the Foster

Reservoir and outlet (recently converted from open ditch to pipeline). The correct PODs for this right appear to be the Glendale Reservoir and Outlet Canal, and the Lamont Johnson Ditch. A water right transfer should be filed to add the Lamont-Johnson Ditch as a POD and correctly show the Glendale Reservoir Outlet Canal as the point of diversion although the location is in the same quarter-quarter section as the old Eastside Ditch.

c) PWIC right no. 13-2103

This right was decreed to PWIC in the Worm Creek Drainage decree but the Department's computer records list the right as being owned by the Preston Whitney Reservoir Co. The right is not listed by PWIC in its own Company bylaws (see Section 3, Water Rights and List of Water Rights). The point of diversion given for this right is the same location for PWIC's right 13-271 (see above). The right authorizes the diversion of 25 cfs from Worm Creek for irrigation with a priority date of 3/14/1924. The right as shown in the Worm Creek decree includes a condition stating that the place of use is the "same as listed under 13-271." Note that PWIC also owns right 13-2104, which authorizes diversion of 25 cfs from the Cub River via the Cub River Worm Creek Canal with a 3/14/1924 priority date. The two rights are the same except for the source of water. The Department's records may need to be corrected to show PWIC as the correct owner of the right as per the Worm Creek Decree. PWIC may wish to consider adding the Lamont-Johnson Ditch as a point of diversion to this water right.

Neither right 13-2103 nor 13-2104 have conditions that limit the rate of diversion under the two rights. Licensing these rights under more modern IDWR policies would likely result in a total combined rate of diversion under the two rights being limited to no more than 25 cfs.

d) Cub River Irrigation Co. Water Rights Place of Use

The place of use given for Cub River Irrigation Co.'s (CRIC) water rights pursuant to descriptions provided by the company in several different water right transfers over the past 15 years does not include any land within Township 16S (T16S) and Range 40E (R40E) yet several of the Spring Creek water right holders and other CRIC shareholders irrigate land in this area. Several company officials have confirmed delivery of water within this area. CRIC should review its place of use boundaries and file any necessary water right transfers to correct or update its service area. IDWR correspondence to CRIC over the past two years advised CRIC to review its service area boundary and make any changes if necessary. Changes appear to be necessary. IDWR will formally notify CRIC to correct its water right place of use boundary through a water rights transfer or other appropriate legal means.

e) Water Rights 13-299 & 13-300 owned by Dennis Webster

IDWR's inventory found that rights 13-299 and 13-300 owned by Dennis Webster are diverted from Worm Creek just below where Mink Creek is injected to Worm Creek. The POD authorized by the rights is the Lamont Johnson Ditch. Several re-diversion head gates are located on the Lamont Johnson Ditch where Webster can take his water but he no longer uses these re-diversions and instead takes the water from a diversion point further upstream on Worm Creek through an open ditch that drops to a gravity pipeline and sprinkler system. The ditch diversion now used by Webster also includes water rights 13-267 in the name of Robert Smith, and 13-305A under the name of Clarence Owen. A water right transfer should

be filed on the two Webster rights to correct the POD. IDWR plans to send Mr. Webster a formal notice regarding this concern.

IDWR also learned that Webster, a PWIC shareholder, may at times divert Mink Creek water that is injected to Worm Creek for the benefit of the Preston Riverdale and Mink Creek Company under water right 13-7747, whose place of use is within PWIC's Worm Creek decree place of use. The place of use for 13-7747 appears to include lands that are served by the North, East and Fairview pipe laterals. Members of the Preston Riverdale and Mink Creek Co are also PWIC shareholders. PWIC's manager Conan Foster explained that Webster diverts Preston Riverdale water in exchange for Webster's PWIC shares at times when Webster's Worm Creek rights are not deliverable. While this may constitute some sort of long standing arrangement between the parties, there is no recognized or formal exchange on record with IDWR. IDWR recommends that an exchange application be filed with IDWR and that the exchange practice be discontinued until the application is approved.

f) PWIC Places of Use above Glendale Reservoir

IDWR has also found that there are a number of PWIC shareholders who re-divert and apply water from the Lamont Johnson Ditch to land located along the ditch between the ditch heading and the Lamont and Johnson Reservoirs. Right number 13-302 (4/1/1896 priority) decreed to Vern Nelson authorizes use of the Lamont Johnson Ditch to irrigate 21 acres south of Glendale Reservoir. Portions of the 21 acres appear to be currently owned by Terry Smith, Mark Owen, Larry Hansen, Murray Nichols and others. PWIC records show that Smith, Owen, Hansen and Nichols are PWIC shareholders receiving water via the Lamont Johnson Ditch above the Lamont and Johnson Reservoirs. Several other shareholders are also identified in PWIC delivery records as receiving water from the Lamont Johnson Ditch above the reservoirs. Users who may be using portions of right 13-302 need to file ownership changes and/or water right transfers to correctly show the current place of use and splits of water right 13-302.

Certain small irrigated tracts along the Lamont Johnson Ditch, some of which are owned by the PWIC shareholders referenced above, appear to be irrigated but have no appurtenant water rights. PWIC has indicated that some of these lands are included in the PWIC service area although not all of these areas were included within the place of use of the PWIC Worm Creek decree water rights. Further contact with the above referenced owners by IDWR and initiation of any water right transfers of 13-302 may clarify the issues further. IDWR may issue Notices of Violation to users who do not comply with filing transfers and/or water right ownership changes.

Again, PWIC must file water right transfer applications for all of its water rights to properly show the irrigated lands within its service area.

Administration of Worm Creek and Tributaries

As noted earlier in this memo and Department correspondence over the past several years, Worm Creek was added to WD13-A in 1983 but there has been no formal administration of Worm Creek water rights by the district since that time. A review of the Worm Creek water rights list attached to this memo shows that the number of privately owned senior priority rights is fairly limited. There are only 14 individual privately owned rights with priorities from 1871 to 1909. Those 14 rights have a total combined diversion rate of only 12.7 cfs. Five of those rights have priorities that are 1880 or senior and total only 2.3 cfs. In contrast, PWIC has an 1880 priority right for irrigation with a diversion rate of up to 50 cfs, although the right does have a volume limit of 2000 AF that may affect the total number of days the right can be diverted. The Preston Whitney Reservoir Company has a 1910 priority right authorizing diversion of 10 cfs for irrigation purposes. It is likely that little water is available on the creek during much of the irrigation season to fill rights junior to PWIC's 1880 right. The several most junior priority rights located towards the end of the creek and west of Franklin are likely filled, if at all, as a result of return flows or waste water from upstream canal companies. IDWR could not locate several Worm Creek water right diversions when making its inventory in 2009. IDWR is not aware of any water delivery complaints or issues from water users on Worm Creek below Glendale Reservoir.

Although the number of individual privately held rights and diversions on Worm Creek is rather limited, the canal company water rights and diversion systems are significant and more complex. IDWR should and will continue steps to extend administration of water rights to Worm Creek and tributaries by Water District 13-A (WD13A). Those steps include:

- a) Continue annual appointment of a watermaster assistant or deputy watermaster for Worm Creek at and above the Glendale Reservoir that may include the PWIC manager or PWIC ditch riders.
- b) Continue requirement of WD13-A to include PWIC measured diversions from and flow of Worm Creek in annual WD13A reports. Reported data should include data that PWIC is already gathering such as daily diversions for the Lamont Johnson Ditch, the Webster Diversion (Diversion 1), Mink Creek injection, Worm Creek flow, the Glendale Reservoir Outlet Canal and spill from the Glendale Reservoir Outlet Canal to Worm Creek. Additional data should include monthly diversion data to users or lateral associations on the Lamont Johnson Ditch, the Glendale Reservoir Outlet Canal, the Foster Reservoir outlet (Fairview Lateral), the outlets of the Lamont and Johnson Reservoirs, discharge from the Lamont Johnson pipeline to the Cub River Middle Ditch/Foster pipeline, and weekly or other regular storage levels recordings for the Glendale, Foster, Lamont and Johnson Reservoirs. IDWR will send correspondence to the watermaster and PWIC concerning annual reporting requirements.
- c) IDWR will send notice to current right holders on Worm Creek and tributaries advising that their rights are included in WD13-A and that they may be subject to assessments from the water district. IDWR will issue an order requiring installation of measuring devices and head gates for Worm Creek and tributary source diversions that currently do not have adequate devices and controlling structures. The order will seek compliance for the 2011 irrigation season and be sent by October 1, 2010.

- d) IDWR will direct the watermaster to begin monitoring diversions from Worm Creek below Glendale Reservoir starting in 2011.
- e) Require WD13-A to develop resolutions at subsequent annual meetings for assessment of water rights on Worm Creek and tributaries.

Measurement of Worm Creek

PWIC measures and records Worm Creek flows just upstream of where Cub River water from the PWIC Upper Fill Ditch is injected to Worm Creek. Measurement at this point is important to know the total flow of Worm Creek, including water from Mink Creek that is measured and injected to Worm Creek about one mile upstream. The Worm Creek measurement is based on use of an installed staff gage on a concrete culvert structure and a rating table that was prepared a number of years ago by representatives from the US Bureau of Reclamation. Although PWIC has referred to the structure as a weir, it is actually a rated structure or section and not a standard measuring device. PWIC could not immediately verify the date of the rating and indicated that there have been no recent updates or calibrations of the rating. IDWR plans to make at least one calibration measurement this summer to check the accuracy of the table and/or any gage shifts. There are likely gage shifts at this rated section due to vegetative growth in the stream channel and along the stream bank. Although a rated section is an acceptable method of measurement, PWIC should make several calibration measurements each year and make any rating table adjustments as necessary. IDWR has recommended standards for rated sections that can be provided to PWIC.

Measurement of Water Injected to Worm Creek from PWIC Upper Fill Ditch from Cub River

IDWR recommends that PWIC and Preston Whitney Reservoir Co consider installation of a measuring device or rated section for measurement of water on the Fill Ditch before it injects to Worm Creek. IDWR is not certain at this time that the measuring device is critical for water distribution purposes on Worm Creek as long as PWIC can make improvements to the measurement of Worm Creek at the rated section above the Fill Ditch injection. However, IDWR believes that better measurement of the Fill Ditch injection can improve overall measurement and distribution within the PWIC and Preston Whitney Reservoir Co systems particularly since some of the re-diversions on the fill ditch above the injection point to Worm Creek (five in total) are not measured, and because there are likely some ditch losses between the ditch heading and injection point.

Other Water Measurement and Water Right Issues

Other observed water measurement and water right issues include:

- a) Weir for measurement of Birch Spring to PW Fill Ditch has poor approach velocity conditions, lacks a good weir pool above the weir, and includes significant channel growth and rocks in the weir pool area that all contribute to inaccurate measurement at the weir.
- b) No measuring devices were found for Spring Creek diversions except for the Hull diversion and the bypass water below the Golightly headgate. The flume for the Hull diversion was installed in a poor location on the ditch and should be moved. The Hull diversion still requires a head gate to be installed before water can be diverted in 2010.

- c) The PWIC and Preston Whitney Reservoir Co. reservoir outlet pipes and other lateral re-diversion pipelines lack any access for IDWR or others to make measurements of the pipes with portable meters for purposes of calibrating the PWIC installed flow meters.
- d) The ponds located on the Golightly property from Spring Creek are not authorized by any water rights.
- e) The Wheatley irrigation pumps located at Gamble Pond and northwest of Gamble Pond should be properly located as points of diversion and/or points of re-diversion on Wheatley's irrigation rights. These pump locations are not described by any of Wheatley's rights.
- g) Whitney Nashville Water Works Co: IDWR inspected the spring collection facility and measuring device for measurement of the spring diversions by Whitney Nashville Water Works Co. (see inventory form and photos attached). The company has two spring sources but currently is limited to the diversion of just one source due to water quality issues. The installed meter that measures the spring diversion is an acceptable device and tracks both flow and volume. IDWR observed a diversion flow rate of 41 gallons per minute (gpm) at the time of inspection. The company maintains flow meter records which can and should be reported to the WD13-A watermaster annually and made part of the watermaster's annual report. The average rate of diversion from the spring source during September of 2009, a peak use month, was 86 gpm or 0.19 cfs, well within the maximum authorized rate of 1.25 cfs. The combined volume use during August and September (only months provided to IDWR) was 21.2 AF, which is about 21% of the authorized 101 AF annual volume limit. Given the expected lower use in most other months, the company is likely within its annual water right volume limit. Since the spring source is tributary to Spring Creek, the right is subject to priority regulation and can be regulated although curtailment of 40 to 90 gpm potentially may not benefit any senior downstream right holders and therefore could be futile.

WORM AND CUB RIVER DRAINAGES CREEKS AND LATERALS

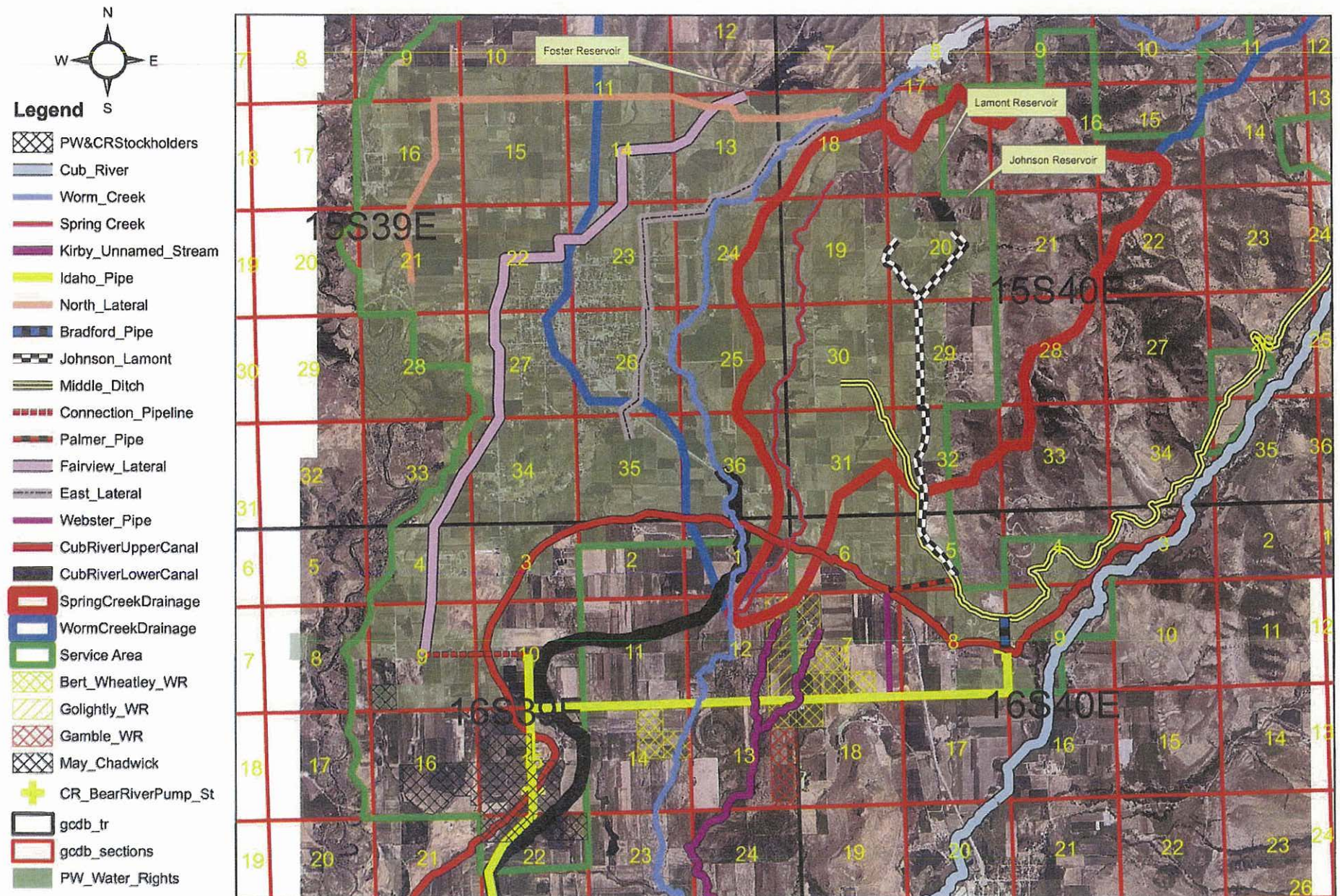


Exhibit E

WORM AND CUB RIVER DRAINAGES CREEKS AND LATERALS

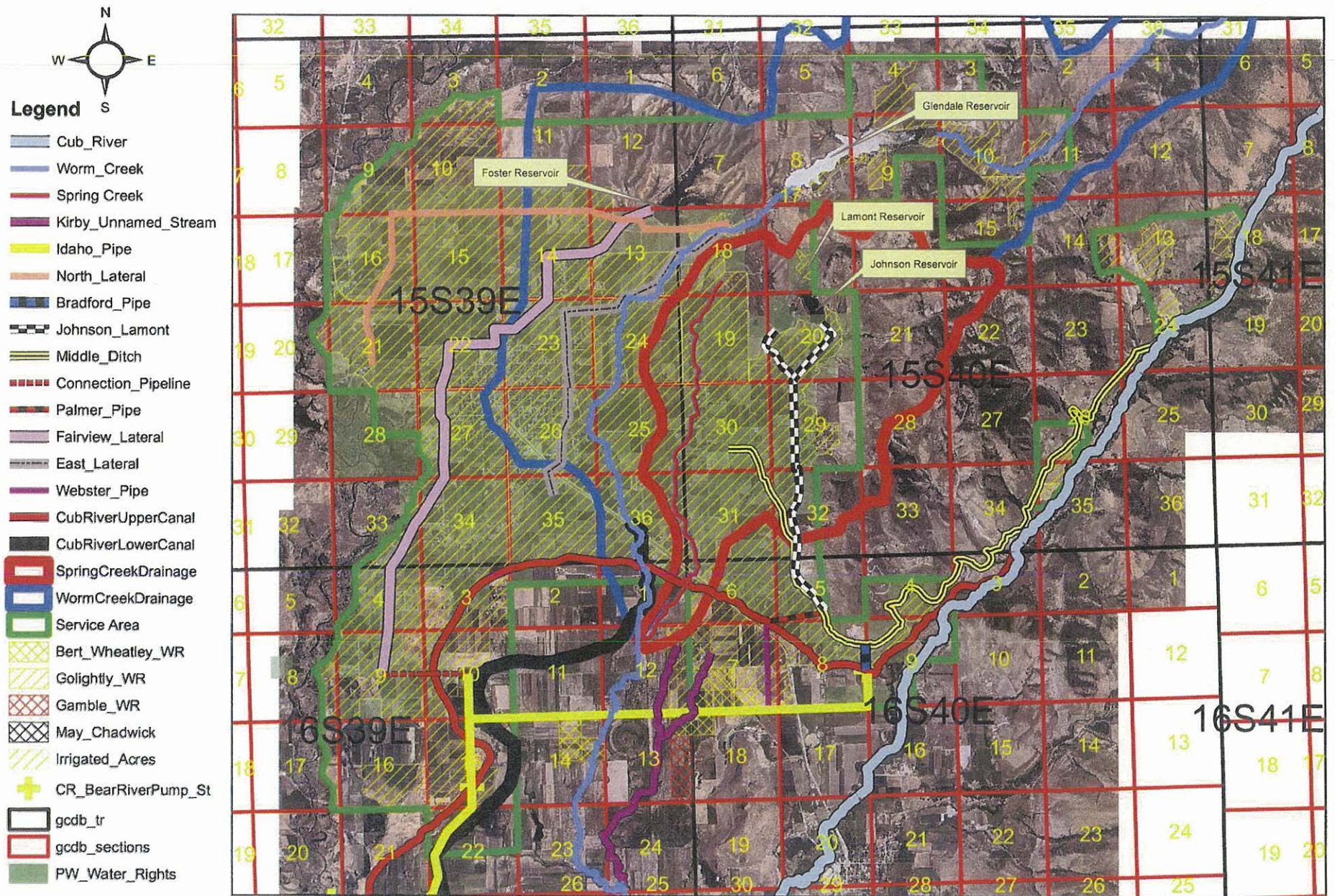


Exhibit F

PRESTON-WHITNEY TRANSFER

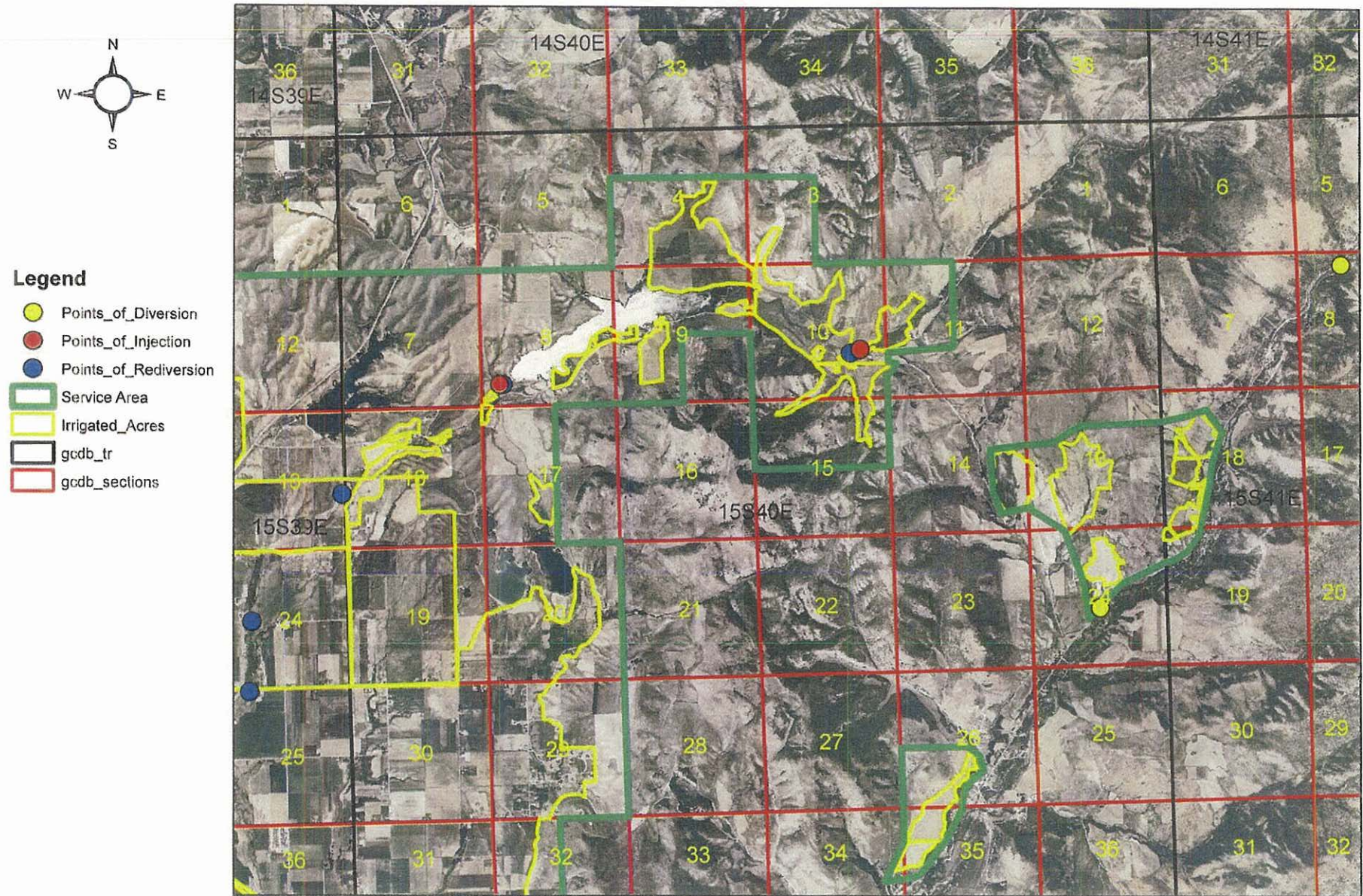


Exhibit G

PRESTON-WHITNEY TRANSFER

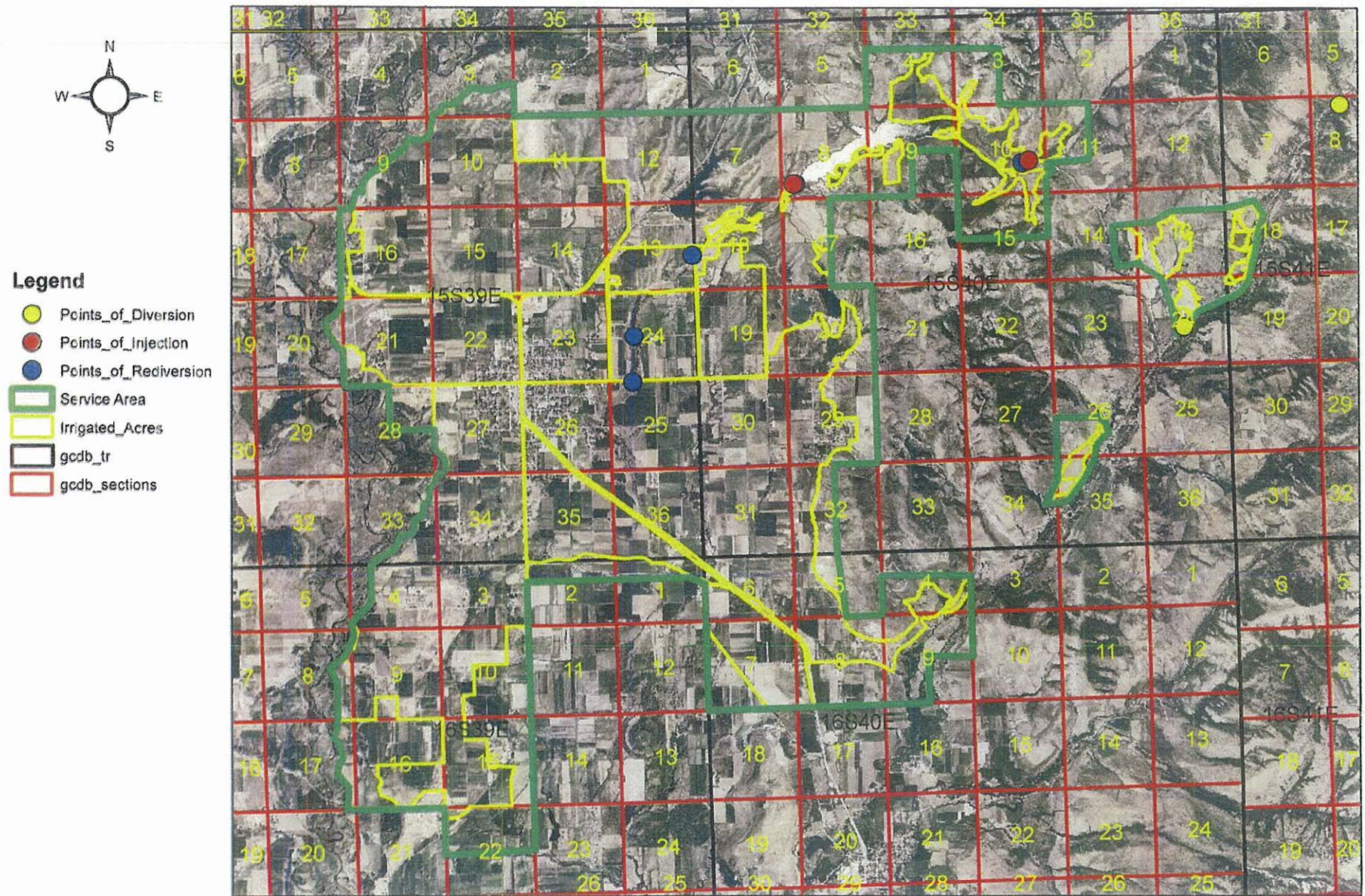


Exhibit H